UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF MICHIGAN

JANET HOFFER,	:	
	:	
Plaintiff(s),	:	
v.	:	Case No.
	:	Jury Trial Demanded

TRANS UNION LLC,
EQUIFAX INFORMATION SYSTEMS, LLC, and
HUNTINGTON NATIONAL BANK. Jointly and Severally

Defendant(s).
____/

COMPLAINT

The Plaintiff, Janet Hoffer ("Plaintiff"), by and through his attorney, the Law Offices of Nicholas A. Reyna P.C., alleges the following:

Nature of Action

1. Plaintiff brings this action against the Defendants, seeking damages and equitable relief, to redress the co-Defendant Trans Union LLC's and Equifax Information Systems, LLC's systemic violations of the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq- hereinafter, "FCRA") and co-Defendant Huntington National Bank systemic violations of the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq- hereinafter, "FCRA")

Parties

2. Plaintiff Janet Hoffer is a citizen of Michigan residing in Grand Rapids, Michigan.

3. Defendant Trans Union, LLC ("Trans Union") is a Delaware Limited Liability

company with its principle place of business in Chicago, Illinois-based credit information provider whose registered office is located at 601 Abbott Road in East Lansing, Michigan 48823.

4. Defendant Equifax Information Systems, LLC ("Equifax") is an Atlanta, Georgia-based foreign profit corporation and credit information provider whose registered office is located at 601 Abbot Road in East Lansing, Michigan 48823.

5. Defendant Huntington Bancshares Michigan, Inc. d/b/a Huntington National Bank ("Huntington") is an Ohio-based Foreign Profit Corporation whose registered agent is The Corporation Company and whose registered office address is located at 30600 Telegraph Road in Bingham Farms, Michigan 48025. Huntington is a furnisher of information as contemplated by the Fair Credit Reporting Act pursuant to 15 U.S.C. § 1681s-2(a) & (b), that regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about consumer transactions or experiences with any consumer.

Jurisdiction and Venue

6. This Court has jurisdiction under 15 U.S.C. § 1681p. Venue in this jurisdiction is proper because the Defendants transact business here, the pertinent events took place here, and the Plaintiff resides here. Furthermore, this action encompasses Federal jurisdiction relating to the Federal law claims under 28 U.S.C. § 1367.

Factual Background

7. On October 7, 2013, the Plaintiff filed for Chapter 7 bankruptcy protection in the Western District of Michigan; the case number for the relevant case is 13-07865-swd (*see Exhibit A*). At the time of filing, a home equity loan due and owing to Huntington

National Bank (account number beginning 2002342) was included on the Plaintiff's relevant bankruptcy schedules (*see Exhibit B*).

8. The bankruptcy case was successfully discharged on August 15, 2014 (*Exhibit A).* At the time of her discharge, no reaffirmation agreement had been filed specific to the second mortgage on her residence held through Huntington National Bank, and as a result that debt was discharged on the referenced date (*Exhibit A*).

9. In July 2015, the Plaintiff made an attempt to apply for credit which was denied as a result of the Huntington National Bank account not being reported as discharged in bankruptcy. Separate dispute letters were thereafter executed and mailed by the Plaintiff to the Defendants on or around July 27, 2015 (*see Exhibit C*).

10. On or around August 27, 2015, the Defendants responded to the Plaintiff's disputes by forwarding updated account summaries for the Huntington National Bank account, with Transunion showing an existing balance of $17,247.00, including remarks that the debt at issue was subject to a Reaffirmation despite one never having been filed, and otherwise failing to note that the debt at issue had in fact been discharged as a part of the Plaintiff's underlying bankruptcy (*see Exhibit D*). The Equifax response correctly updated the information as directed in the Plaintiff's dispute (*Exhibit D*).

11. However, subsequent review of the Plaintiff's Equifax credit report dated September 2, 2016 revealed that despite the previous changes, the account reporting had again been altered to indicate a current balance being due and owing to Huntington (*see Exhibit E*). Further review of the Plaintiff's Trans Union credit report dated September 5, 2016 revealed that the Huntington account at issue continued to be reported with a current balance and as reaffirmed despite the foregoing facts (*see Exhibit F*).

12. The misreported information at issue was presumably communicated to both Transunion and Equifax by Huntington, who effectively responded to the Plaintiff's disputes by verifying false information regarding the Plaintiff's account to both Transunion and Equifax.

13. Trans Union and Equifax maintained the inaccurate information in the Plaintiff's consumer file as a result of the verification from the source of the inaccurate information, and their own failure to conduct a proper, reasonable reinvestigation of the inaccurate information.

14. The Defendants are mutually responsible for purposefully misreporting the account information at issue.

15. As a result of the negative and inaccurate credit reporting, the Plaintiff's credit score continues to be adversely affected, and the Plaintiff's credit reputation was and continues to be wrongfully damaged.

16. "The duty to correct an incomplete or inaccurate report equally extends to the discovery of both inaccurate or incomplete consumer information and to the discovery of consumer information that is materially misleading." *Boggio v. USAA Fed. Saving Bank*, 696 F.3d 611, 614 (6th Cir. 2012).

17. Consumer reporting agencies pursuant to Section 1681e(b) of the Fair Credit Reporting Act are required to "follow reasonable procedures to assure maximum possible accuracy when preparing a consumer report." *Nelski v. Trans Union, LLC*, 86 F.App'x 840, 844 (6th Cir. 2004). Under this section, "liability flows only from a 'failure to follow (1) reasonable procedures (2) to assume maximum possible accuracy of the information (3) concerning the individual about whom the information relates. *Id* at 844.

The reasonableness standard is "what a reasonably prudent person would do under the circumstances." *Id* at 844.

18. The Sixth Circuit has established that the elements necessary to assert a claim under 1681e(b) involve a Plaintiff proving (1) the Defendant reported inaccurate information about the Plaintiff; (2) the Defendant either negligently or willfully failed to follow reasonable procedures to assure maximum possible accuracy of the information about the Plaintiff; (3) the Plaintiff was injured; and (4) the Defendant's conduct was the proximate cause of the Plaintiff's injury. *Nelski* at 844.

19. A credit report is "inaccurate when it is patently incorrect or when it is misleading in such a way and to such an extent that it can be expected to have an adverse effect." *Poore v. Sterling Testing Systems, Inc.*, 410 F.Supp.2d 557 (E.D.Ky. 2006) See also *Dickens v. Trans Union Corp*., 18 F.App'x 315, 318 (6th Circ. 2001).

20. An FCRA violation occurs when CRAs such as Trans Union provide information that creates a "materially misleading impression," that omits material to create "incomplete or inaccurate" information, or even when a furnisher fails to identify that a consumer has disputed his information, when the dispute is a bona fide one that "could materially alter how the reported debt is understood." *Boggio v. USAA Federal Sav. Bank*, 696 F.3d 611, 617-18 (6th Cir. 2012).

21. The Plaintiff seeks equitable damages, including correction of the subject trade line from the Plaintiff's credit report, along with monetary damages, both actual, punitive, and statutory due to the failure of the Defendants to properly modify the account information at issue, in whatever amount a jury finds Defendants liable, plus attorney fees, litigation costs, and court costs.

COUNT I- VIOLATION OF FAIR CREDIT REPORTING ACT BY CO-DEFENDANTS TRANS UNION LLC AND EQUIFAX INFORMATION SYSTEMS, LLC

22. Plaintiff incorporates by reference the aforementioned allegations as if restated fully herein word for word.

23. The Plaintiff prepared, compiled, issued, assembled, transferred, published, and otherwise reproduced a consumer report regarding the Plaintiff as defined under 15 U.S.C. §1681a.

24. The referenced report contained information about the Plaintiff that was false, misleading, and inaccurate.

25. By failing and/or refusing to properly investigate the Plaintiff's dispute, and/or subsequently altering the Plaintiff's credit report to reflect incorrect information, both Trans Union and Equifax willfully refused and failed to maintain and/or follow reasonable procedures to assure maximum possible accuracy of the information it reported to one or more third parties pertaining to the Plaintiff in violation of 15 U.S.C. § 1681e(b).

26. In the alternative, Trans Union and Equifax negligently refused and failed to maintain and/or follow reasonable procedures to assure maximum possible accuracy of the information it reported to one or more third parties pertaining to the Plaintiff in violation of 15 U.S.C. § 1681e(b).

27. After receiving the Plaintiff's consumer dispute, Trans Union willfully failed to conduct a *reasonable* investigation thereof as required by 15 U.S.C. § 1681i, such verified by the fact that Trans Union failed to properly update the account information at

issue. While Equifax apparently did conduct such an investigation, they subsequently altered the Plaintiff's report to reflect the same information which had been previously, accurately disputed.

28. In the alternative, Trans Union and Equifax negligently failed to conduct a reasonable investigation as required by 15 U.S.C. § 1681i for the foregoing reasons.

29. In this instance, it is clear and obvious that Trans Union and Equifax (1) reported inaccurate information about the Plaintiff's Huntington account, (2) the Defendants either negligently or willfully failed to modify that account information and/or modified it following the Plaintiff's dispute in such a way as to only enhance the previous misreporting of the account, (3) the Plaintiff is now being injured by reporting on the account which misidentifies it, and (4) but for the Defendants' conduct, that injury would not have occurred. As a result, the Defendants are clearly in violation of § 1681e(b)

30. There is simply no doubt in this instance that the information currently being furnished by Trans Union and Equifax creates a materially misleading impression regarding the Huntington account and otherwise seems to indicate that the debt had not been discharged as a part of the Plaintiff's prior bankruptcy filing when demonstrably it had been.

31. As a direct and proximate cause of Trans Union and Equifax's failure to perform their required duties under the FCRA, the Plaintiff has suffered actual damages, including potential denial of credit, reduced opportunity for credit, increased costs, interest, and fees for credit, along with emotional distress, humiliation, and embarrassment.

32. False information was and continues to be furnished by the Defendant.

33. Upon reinvestigation, Trans Union and Equifax reported erroneous credit information and consciously avoided knowing that the credit information was inaccurate in violation of the FCRA, 15 U.S.C. §1681s2(b).

34. Trans Union and Equifax are liable to the Plaintiff by reason of their violations of the FCRA in an amount to be determined by a jury together with her reasonable attorneys' fees pursuant to 15 U.S.C. § 1681o.

COUNT II- DEFAMATION

35. Plaintiff incorporates by reference the aforementioned allegations as if restated fully herein word for word.

36. Trans Union and Equifax caused to be published one or more written false statements which were intended to impeach the Plaintiff's honesty, integrity, credit worthiness, and/or reputation.

37. The Plaintiff is not a public figure.

38. The statements by Trans Union and Equifax to the public represent a slur on the Plaintiff's character by each, including her honesty, integrity, virtue, or reputation, as well as her credit worthiness.

39. The defamatory statements resulted in damages to the Plaintiff.

COUNT III- VIOLATION OF FAIR CREDIT REPORTING ACT BY CO-DEFENDANT HUNTINGTON NATIONAL BANK, INC.

40. A Plaintiff incorporates by reference the aforementioned allegations as if restated fully herein word for word.

41. Pursuant to 15 U.S.C. 1681s-2(a)(1)(A), a person shall not furnish any

information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate. Presumably the inaccurate payment history evident in the Plaintiff's credit reports was information first supplied to both Trans Union and Equifax by Huntington.

42. Every circuit to have addressed the issue holds that an investigation undertaken by a furnisher such as Huntington upon receipt of a dispute like the one forwarded by the Plaintiff must be a reasonable one. *See Johnson v. MBNA a. Bank, NA*, 357 F.3d 426, 430-31 (4th Cir. 2004). The term "investigation" itself denotes a "fairly searching inquiry" or at least something more than a merely cursory review." *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1155-57 (9th Cir. 2009). A simple review of the bankruptcy docket and/or payment history to Huntington by the Plaintiff, both of which were readily available to it, would have revealed that the dispute of the Plaintiff was justified and that several errors remained which required correction on the subject credit report.

43. Even assuming a reasonable investigation was first undertaken by Trans Union and/or Equifax upon the Plaintiff's initial dispute, Huntington further violated the Fair Credit Reporting Act, 15 U.S.C. § 1682s-2(b), by falsely verifying the debt to Trans Union and/or Equifax when contacted by them to verify the dispute.

44. Huntington reported inaccurate information concerning the Plaintiff to Trans Union and Equifax presumably both prior to and following the Plaintiff's dispute.

45. Upon information and belief Trans Union and Equifax forwarded the Plaintiff's dispute to Huntington, who received it, and thereafter demonstrably failed to conduct a reinvestigation consistent with its' obligations as set forth in 15 U.S.C. 1682s-

2(b)(1)(A)-(E).

46. Section 1682s-2(b) provides that after receiving notice of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall (A) conduct an investigation with respect to the disputed information; (B) review all relevant information provided by the consumer reporting agency; (C) report the results of the investigation to the consumer reporting agency; and (D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis. In addition, a person shall complete all investigations, reviews, and reports under this subsection before the expiration of the period set forth under 15 U.S.C. § 1681i(a)(1).

47. Huntington committed such violations willfully or negligently thereby violating 15 U.S.C. §1681n and or §1681o.

48. Section 1861n provides that any person who willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of (1) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or (2) such amount of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney’s fees as determined by the court.

49. Section 1861n provides that any person who willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that

consumer in an amount equal to the sum of (1) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or (2) such amount of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

50. Huntington negligently violated 15 U.S.C. §§ 1681s-2(b) and 1681o; alternatively, Huntington willfully violated 15 U.S.C. §§1681s-2(b) and 1681n.

51. In addition, when a person "willfully fails to comply with any requirement imposed…with respect to any consumer," that consumer may seek actual or statutory damages, as well as punitive damages and attorney's fees and costs. *Beaudry v. Telecheck, Servs., Inc.*, 579 F.3d 702, 705-06 (6th Cir. 2009).

52. The Plaintiff suffered clear and unequivocal damages as a result of these violations of the FCRA by Huntington.

DEMAND FOR JUDGMENT AND RELIEF

WHEREFORE, based upon the foregoing facts, the Plaintiff respectfully requests the following relief:

(A) Statutory and actual damages in an amount to be determined by the Court.

(B) Deletion or correction of any and all accounts being wrongfully reported by the Defendant.

(C) Statutory costs and attorney fees under the FCRA.

(D) Injunctive relief, including but not limited to correction of the account.

(E) Compensatory and/or punitive damages.

(F) Any other relief which the Court deems appropriate.

Demand for Trial by Jury

Plaintiff demands trial by jury.

RESPECTFULLY SUBMITTED,
LAW OFFICES OF NICHOLAS A. REYNA

Date: September 20, 2016

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